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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,063	07/15/1999	JOHN CRESCENTI	044463.0013	4554

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EXAMINER

COLBERT, ELLA

ART UNIT	PAPER NUMBER
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3694

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/01/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/01/2007.

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Office Action Summary

Application No.

09/354,063

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-89 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 52-89 are pending in this communication filed 12/07/06 entered as Response After Non-Final Action and Request for Extension of Time.
2. The Correspondence Address change filed 12/17/06 has been entered.
3. The Change in Power of Attorney filed 12/18/06 has been entered.
4. The 35 USC 112 second paragraph rejection has been overcome in part and is partially hereby withdrawn as set forth here below.
5. The claim objections have been overcome in part and are partially hereby withdrawn as set forth here below.
6. The allowable subject matter from the 8/15/06 Office Action is hereby withdrawn in view of a newly found reference and new rejections and objections as set forth here below.

Claim Objections

7. Claims 52-61, 65-74, and 78-86 are objected to because of the following informalities: Claim 52 recites "providing a management software component that operates on a first network device; providing a plurality ... component that operate on at least a second network device ..; ...; ...; controlling backup and retrieval ... software component which comprises ...; and recording ... software module which comprises ...". These claim limitations would be better recited as "providing a management software component operating on a first network device; providing a plurality ... components operating on at least a second network device ..; ...; ...; controlling backup and retrieval ... software component comprising ...; and recording ... software module

Art Unit: 3694

comprising ...". Appropriate correction is required. Claims 65 and 78 have a similar problem.

Claim 53, line 3 recites "software component which comprises ...". This line would be better recited as "software component comprising ...". Claims 54-61, 66-74, and 79-86 have similar problems.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 52, 65, and 78 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: Claim 52 has "a first network device" and a "second network device", however, there is not "the first network device" or "the second network device" any place in the claim limitations. Therefore, essential elements are missing from the claim limitations connecting the claims. There is a disconnect between claim limitations one and two and the other claim limitations three through four. Claims 65 and 78 have similar problems.

It is unclear and vague what happens to the "first network device" and the "second network device" after the "management software component operates" on them. The "first network device" and the "second network device" should be incorporated into the body of the claim again. Suggestion: incorporate the "backup and retrieval data operating on a first network device and a second network device" from the preamble into the body of the claim.

Claim Rejections - 35 USC § 102(a)(e)

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

11. Claims 52-89 are rejected under 35 U.S.C. 102(e) as being anticipated by (US 6,112,239) Kenner et al, hereafter Kenner.

With respect to independent claims 52 and 78, Kenner discloses, A method for backup and retrieval of data, the method comprising: providing a management software component that operates on a first network device (col. 7, lines 18-28 and Fig. 1 (14 – Internet service provider and connected to (12) –first network device); providing a plurality of media software components communicatively coupled to the management software component, that operate on at least a second network device, the media software components being communicatively coupled to a storage device storing data (col. 14, lines 44-55 and fig. 1 (client program (36), browser (38) or configuration program are the plural media software components); selecting a media software component from among the plurality of media software components using the management software component (the browser (38) Fig. 1 is one of the selectable software components and gets selected by simply using it.); controlling the selected media software component using the management software component (the browser (38) is a software component controlled by the management software component (14) because it is a service provider controlling content to the browser (38)); controlling backup and retrieval of data to the storage device using the selected media software component which comprises at least one software module configured to control backup

and retrieval of data to the storage device (a browser (38) is the selected component which controls the retrieval of data once the data has been successfully retrieved, it is backed up on the client device); and recording a physical address on the storage device using the at least one software module which comprises an indexing software module configured to record a physical address on the storage device (the browser (38) inherently records an IP address temporarily by displaying it to the user in the browser window. Some browsers also store cookies having IP addresses. These IP addresses are the recorded physical addresses. The software instructions which cause the IP address to be displayed in the browser window, or the instructions to collect cookies would be the indexing software. An index can be as little as one line of recorded information, and if you have instructions that can record the one line, you have indexing software).

Claim 65, Kenner further discloses a plurality of network devices (col. 8, lines 20-37 (configuration utility (34) and client program (34) and browser (38) and the media software components further capable of controlling backups to the storage device). See above for claims 52 and 78.

With respect to claims 53, 66, and 79, Kenner discloses, the method of claim 52, further comprising controlling backup and retrieval of data to the storage device using the selected media software component which comprises at least a second software module configured to control the backup and retrieval of data to the storage device, and to manage the physical transfer of data to and from the storage device using the second software module which comprises a data mover software module configured to manage the physical transfer of data to and from the storage device (the media software component is the client program (36) in Fig. 1 and the second software module is the configuration utility (34) see col. 7, lines 18-66 and col. 8, lines 7-19 and

the data mover is in Fig. 4 (120, 122, 124, 126, 128, 130, 132, 134, 138, 140, 142, 144, and 146 and col. 17, line 44-col. 19, line 50).

With respect to claims 54, 67, and 80, Kenner discloses, the method of claim 52, comprising backup and retrieval of data to the storage device using the selected media software component which comprises at least a second software module configured to control the backup and retrieval of data to the storage device and physical media of the storage device using the second software module which comprises a library software module configured to control the physical media of the storage device (col. 13, lines 45-63).

With respect to claims 55, 68, and 81, Kenner discloses, the method of claim 52, further comprising coordinating usage of the storage device using the management software component which comprises at least a second software module configured to coordinate usage of the storage device (this dependent claim is rejected for the similar rationale as given above for claims 52-54).

With respect to claims 56, 69, and 82, Kenner discloses, the method of claim 55, further comprising storing backup and retrieval preferences of a software application using the second software module which comprises an application software module configured to store backup and retrieval preferences a software application (this dependent claim is rejected for the similar rationale as given above to claims 52-55).

With respect to claims 57, 70, and 83, Kenner discloses, the method of claim 55 further comprising tracking the location of data across library media using the second software module which comprises an archive software module configured to track the

location of data across library media (col. 13, lines 45-63 and also for the similar rationale as given above for claims 54-56).

With respect to claims 58, 71, and 84, Kenner discloses, the method of claim 55, further comprising managing system processes using the second software module which comprises a jobs software module configured to manage system processes (col. 8, lines 20-56).

With respect to claims 59, 72, and 85, Kenner discloses, the method of claim 55, further comprising tracking usage of the storage device using the second software module which comprises a media usage software module configured to track usage of the storage device (col. 8, lines 7-36).

With respect to claims 60, 73, and 86, Kenner discloses, the method of claim 55, further comprising coordinating the transfer of data between system software components, software modules, and the storage device using the second software module which comprises a data transfer software module configured to coordinate the transfer of data between system software components, software modules, and the storage device (col. 8, lines 37-56).

With respect to claims 61 and 74, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 62 and 75, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 63 and 76, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claims 64 and 77, these dependent claims are rejected of the similar rationale as given above for claim 52.

With respect to claim 87, this dependent claim is rejected of the similar rationale as given above for claim 52.

Inquiries

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 3694

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February 19, 2007


ELLA COLBERT
PRIMARY EXAMINER